



# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 42.

THE UNITED STATES, APPELLANT,

VS.

STANLEY FIELD, AS EXECUTOR OF THE ESTATE OF  
KATE FIELD, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

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1 I. PETITION AND EXHIBITS. FILED MAY 6, 1920.

STATE OF ILLINOIS,  
County of Cook, ss:

In the Court of Claims of the United States.

STANLEY FIELD, AS EXECUTOR OF THE  
estate of Kate Field, deceased.

No. 34595.

vs.

UNITED STATES OF AMERICA.

*Petition.*

May 6, 1920.

*To the Honorable Judges of Said Court:*

1. Petitioner, Stanley Field, a citizen of the State of Illinois and a resident of the city of Chicago, as executor of the estate of Kate Field, deceased, files this petition to recover from the United States of America the sum of \$121,059.60, with interest thereon at the legal rate from February 19, 1920, being the amount paid by petitioner to the collector of internal revenue of the United States for the First District of Illinois as an additional estate tax assessed and wrongfully collected by the Commissioner of Internal Revenue of the United States on the estate of Kate Field, deceased, and paid by said petitioner under duress and written protest.

2. Kate Field, who was the mother of petitioner, died a resident of Chicago, Ill., on April 29, 1917, leaving a last will and testament under which petitioner was nominated executor.

3. Said will of Kate Field was duly filed in the Probate Court of Cook County, Ill., and after hearing was, by order of said Court admitted to probate on the 20th day of June, 1917, and on the same day letters testamentary were issued to petitioner, as executor under said will (a copy of which said will is attached hereto and made a part hereof as Exhibit "A"); and a duly authenticated copy of the record of petitioner's said appointment as such executor is filed herewith.

4. In and by said last will and testament said Kate Field made the following disposition of her individual property:

(a) Various specific legacies aggregating in value ninety-three thousand five hundred dollars (\$93,500.00);

(b) All the rest, residue and remainder of her estate testatrix gave in equal shares to her three daughters, Maud Field Clegg, Laura Field Clegg, and Josephine Field Crossley.

5. Joseph N. Field, who was the husband of testatrix, died a resident of Chicago, Ill., on April 29, 1914, leaving a last will and testament and codicil thereto. Said last will and testament and codicil

of said Joseph N. Field, deceased, was duly filed in the Probate Court of Cook County, Ill., and after due hearing was, by order of said Court, admitted to probate on the 11th day of August, 1914 (a copy of which said will and codicil is hereto attached and made a part hereof as Exhibit "B").

6. In and by his last will and testament Joseph N. Field, after making certain specific bequests, gave and devised all the residue of his estate to petitioner, Stanley Field, and to Arthur B. Jones, of Chicago, as trustees, with full power and authority to sell, assign, transfer, and convey the same, and with direction to divide said estate into separate trust funds, the first of which trust funds was provided for as follows:

3 "If my wife, Kate Field, shall survive me, one-third ( $\frac{1}{3}$ ) of said trust estate shall be set apart and held as a separate trust fund for the benefit of my said wife, and the net income derived therefrom shall be paid to my wife during her life, and from and after her death the net income from one-half ( $\frac{1}{2}$ ) of said share of said trust estate shall be paid to such persons, and in such shares as she shall appoint by her last will and testament."

Said testator further provided that said trust should continue until the death of the last survivor of testator's grandchildren living at the time of his death. Said grandchildren were eleven in number at the date of the death of Kate Field, deceased.

7. Said Kate Field, in and by her last will and testament, in addition to disposing of her individual estate as above described, exercised the power of appointment so given to her by the will of her said husband, Joseph N. Field, in the following manner:

"Seventh. Under the will of my late husband, Joseph N. Field, I am given the power to dispose of the net income from one-half of a trust fund from and after the date of my death, I receiving the whole of the net income from said trust fund during my life, and in the exercise of said power I do hereby direct that the income over which I have the power of appointment as aforesaid shall be paid in equal shares to my children surviving at the date of the respective payments which shall be made out of the income from said trust fund; provided, however, that the surviving issue of any deceased child shall stand in the place of and receive the share of said net income which such deceased child would have been entitled to receive if living at the date of the respective payments out of said income."

4 8. The internal revenue act of the United States of 1916, Title II, in effect September 9, 1916, as amended March 3, 1917, provided in section 201 as follows:

"That a tax (hereinafter in this title referred to as 'The Tax') equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three is hereby imposed upon the transfer of the net estate of every decedent dying

after the passage of this act, whether a resident or nonresident of the United States:

1½ per centum of the amount of such net estate not in excess of \$50,000.

3 per centum of the amount by which such net estate exceeds \$50,000, and does not exceed \$150,000, etc."

Said law further provided in section 202 as follows:

"That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

(b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;"

5 9. Said United States internal revenue act of 1916, as amended, provided in section 212 that the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, should make such regulations and prescribe and require the use of such books and forms as he might deem necessary to carry out the provisions of said Title II. Plaintiff is informed and believes, and therefore states the fact to be, that acting under the power of said section 212, the Commissioner of Internal Revenue issued certain regulations, among which regulations No. 37, revised in May, 1917, Art. XI, provides as follows:

"Property passing under a general power of appointment is to be included as a portion of the gross estate of a decedent appointor."

10. As executor of the estate of Kate Field, deceased, petitioner duly made a tentative return for estate tax to Julius F. Smietanka, collector of internal revenue of the United States for the first district of Illinois, and filed said return in the office of said collector on, to wit, the 11th day of July, 1917 (a copy of which said return is attached hereto and made a part hereof as Exhibit "C"); said return showed that the net individual estate of Kate Field, deceased, subject to tax, amounted to the sum of \$355,011.22. A tax thereon, amounting to the sum of \$14,550.67, was duly paid by petitioner to said collector of internal revenue on, to wit, the 11th day of July, 1917 (the actual amount in cash paid by petitioner was \$13,968.65,

being said sum of \$14,550.67 less the statutory discount of 5 per cent); and said Julius F. Smietanka issued to petitioner, as said executor, a receipt for said tax (copy of which said receipt is attached hereto and made a part hereof as Exhibit "D").

6 Said return for estate tax so made by petitioner, as executor of said estate, did not include any of the property of the estate of Joseph N. Field, deceased, held in trust as above described, or of the value of the income from said property over a portion of which said income said Kate Field, deceased, had and exercised the power of appointment above described.

11. And afterward the Commissioner of Internal Revenue of the United States made an investigation of the said return and of the value of the individual estate of said Kate Field, deceased, and of the value of said appointed estate, and increased the assessed value of said individual estate and fixed an assessed value on said appointed estate, and thereupon assessed an additional estate tax (over and above the amount paid as aforesaid) amounting to the sum of \$121,619.44, and the said collector of internal revenue did, on December 12, 1919, demand of petitioner that he pay said additional estate tax of \$121,619.44 within thirty days thereafter.

And thereafter, in view of certain errors in the assessment of said additional tax, on January 4, 1920, petitioner filed with the collector of internal revenue for the first district of Illinois, a claim for abatement, claiming an abatement in said additional tax of the sum of \$23,808.65, by reason of certain alleged errors in the assessed value so made by said commissioner.

And thereupon said Commissioner of Internal Revenue reexamined said assessed values and made certain reductions therein, so that the assessed values as finally determined by said commissioner were as follows:

7 Assessed value of said individual estate of Kate Field deceased.....	\$450,675.00
Assessed value of said appointed estate.....	1,449,503.97
Total alleged gross estate.....	1,900,239.26
Less deductions allowed.....	78,458.06
Total alleged net estate.....	1,821,780.50

And upon the alleged net value so fixed said commissioner determined that a total additional tax was due amounting to the sum of \$120,909.58; and on February 19, 1920, H. W. Mager, then acting collector of internal revenue of the United States for the first district of Illinois, demanded of petitioner as an additional estate tax, alleged to be due under said internal revenue act of the United States of 1916, Title II, the said sum of \$120,909.58 and a penalty of \$1,192.53, making a total additional tax and penalty so demanded of \$122,102.11. And said acting internal revenue collector did then and there threaten petitioner, in the event of nonpayment, with certain penalties provided by the statutes of the United States for the punishment of delinquent taxpayers.

12. And thereafter, on February 20, 1920, petitioner paid to said acting collector of internal revenue the said total sum of \$122,102.11, under written protest, a copy of which said protest is attached hereto and made a part hereof as Exhibit "E."

13. And thereafter, on March 3, 1920, petitioner filed in the office of said acting internal revenue collector a claim for refund, claiming said amount now sued for, being the sum of \$121,059.60. Said claim of \$121,059.60 is that part of the total additional tax and interest which was assessed by said Commissioner of Internal Revenue

on the theory that that part of said trust estate of Joseph N. Field, deceased, over which said Kate Field, deceased, exercised a power of appointment was a part of the gross estate of Kate Field, deceased, within the meaning of said internal revenue law of 1916, Title II, and does not include any part of said additional tax which was fixed on account of the increased assessment so determined by said Commissioner of Internal Revenue on the individual estate of Kate Field, deceased. A copy of said claim for refund, with a copy of the receipt thereto attached, is attached hereto and made a part hereof as Exhibit "F."

14. And afterward, on, to wit, the 29th day of March, 1920, said claim for refund so filed by said petitioner was considered and rejected by said Commissioner of Internal Revenue.

15. It is contended by this petitioner that no part of the Joseph N. Field estate over which said Kate Field had and exercised her power of appointment is, or ought to be, construed as a portion of the gross estate of said deceased appointor, Kate Field, within the terms of said internal revenue act of 1916, Title II, as amended, and that therefore no tax is due or collectible upon the estate so passing or to pass pursuant to the exercise of said power of appointment, and that said internal revenue law of 1916, Title II, did not authorize the assessment or collection of said tax, and that said sum of \$121,059.60, being the additional tax fixed in said estate as due because of the commissioner's contention that said appointed estate was a part of the gross estate of said Kate Field, deceased, was wrongfully collected and should be paid to this petitioner with interest.

16. Petitioner further represents that he is the sole and absolute owner of the claim herewith presented, and that he has made no transfer or assignment of said claim, or of any part thereof, and

that petitioner is justly entitled to the amount claimed herein from the United States, after allowing all just credits and offsets; that petitioner has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government, and that he believes the facts as stated in this petition to be true.



Petitioner therefore prays judgment in his favor and against the United States of America for the said sum of \$121,059.60, and interest.

STANLEY FIELD,  
*As Executor of the Estate of Kate Field, Deceased,*  
112 West Adams Street, Chicago, Ill.

CARLISLE, HOWE & SWAYZE,  
*Attorneys for Petitioner, 717 Fourteenth Street NW.,*  
Washington, D. C.

WILSON, McILVAINE, HALE & TEMPLETON,  
Chicago, Ill.,  
*Of Counsel.*

STATE OF ILLINOIS,  
*County of Cook, ss.*

Stanley Field, being first duly sworn, on oath says, that he has read the foregoing petition subscribed by him, and that the same is true in substance and in fact.

STANLEY FIELD.

Subscribed and sworn to before me this 29th day of April, A. D. 1920.

RICHARD H. PEEL,  
*Notary Public for Cook County, Ill.*

10

*Exhibit "A."*

Last will and testament of Kate Field, deceased.

I, Kate Field, of Chicago, Ill., do make this my last will and testament as follows:

First. I direct that all claims against my estate and also all inheritance taxes, so called, be paid as soon as practicable after my death. It is my will that the bequests given herein, other than to my residuary legatees, be paid free from any deduction by reason of inheritance taxes, or any other deduction whatsoever.

Second. I give and bequeath five thousand dollars (\$5,000.00) to Mrs. Libby Bell, of Rushville, Ill.

Third. I give and bequeath two thousand dollars (\$2,000.00) to Mrs. Ida M. Eddy.

Fourth. I give to my son Stanley Field, as trustee, sixty-five hundred dollars (\$6,500.00), to be kept invested, and the net income derived therefrom to be paid to Ella Campbell for and during her life; the principal of said trust fund to go to my residuary legatees upon her death.

Fifth. I give and bequeath to each of my three sons-in-law, Henry Gordon Clegg, William G. Clegg and Sir Kenneth Crossley, Bart., the sum of twenty-five thousand dollars (\$25,000.00).

Sixth. I give and bequeath to my niece, Grace James Gillette, the sum of five thousand dollars (\$5,000.00).

Seventh. Under the will of my late husband, Joseph N. Field, I am given the power to dispose of the net income from one-half of a trust fund from and after the date of my death, I receiving the  
 11 whole of the net income from said trust fund during my life, and in the exercise of said power I do hereby direct that the income over which I have the power of appointment as aforesaid shall be paid in equal shares to my children surviving at the date of the respective payments which shall be made out of the income from said trust fund; provided, however, that the surviving issue of any deceased child shall stand in the place of and receive the share of said net income which such deceased child would have been entitled to receive if living at the date of the respective payments out of said income.

Eighth. All the rest, residue, and remainder of my estate I give and bequeath in equal shares to my three daughters, Maud Field Clegg, Laura Field Clegg, and Josephine Field Crossley.

Ninth. I appoint my son Stanley Field executor of this my last will and testament, and direct that no bond or security be required of him as such executor.

In witness whereof I have hereunto set my hand and seal this 7th day of January, A. D. 1916.

(Signed) KATE FIELD. [SEAL.]

The foregoing instrument was, on the day of the date thereof, signed, sealed, and declared by the said testatrix Kate Field, to be her last will and testament, in the presence of us, who, at her request and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

(Signed) CHARLES E. MARTIN.  
 FRED H. REYNOLDS.  
 JAMES M. BARNES.

12

*Exhibit "B."*

Last will and testament of Joseph N. Field.

I, Joseph N. Field, of Chicago, State of Illinois, do hereby make, publish and declare this my last will and testament as follows, hereby revoking all prior wills:

First. I direct my executors to pay all just debts and claims against my estate within a reasonable time after my decease.

Second. I give, devise and bequeath to my wife, Kate Field, in case she shall be living at the time of my death, all my right, title and interest in and to the premises in the town of Bowdon, Cheshire, England, near Manchester, known as "Ashleigh," as well as any other premises which we may be occupying as a family residence at

the date of my death, and also in and to all the household furniture, books, pictures, plate, linen, horses, carriages, harnesses and contents of stable, and other personal property used in and about or in connection with the said premises above mentioned, at the time of my decease.

Third. I give and bequeath to each of my nephews, Dwight James, Howard James and Philip James, and to each of my nieces, Mrs. Grace James Gillett, Bertha Dibblee King, Frances Dibblee Sprague, Ethel Field Beatty, Minna Field Gibson, and Florence Field Lindsay, provided they shall respectively be living at my death, the sum of ten thousand dollars (\$10,000.00) as a remembrance.

Fourth. I give and bequeath to my cousin, Lucy Ann Field, of New Jersey, daughter of my late uncle, William Field, in case she shall be living at the time of my death, the sum of five thousand dollars (\$5,000.00).

Fifth. I give and bequeath to Paula Reif Huck, if she be living at the time of my death, the sum of ten thousand dollars (\$10,000.00),

13 Sixth. I give and bequeath to Arthur B. Jones, of Chicago, if he be living at the time of my death, the sum of ten thousand dollars (\$10,000.00).

Seventh. I give and bequeath to Mrs. Ida M. Eddy, if she be living at the time of my death, and shall not have contracted a second marriage, the sum of two thousand dollars (\$2,000.00).

Eighth. I give and bequeath to Ella Campbell, if she shall be in my employ at the time of my death, the sum of three hundred pounds sterling (£300).

Ninth. I direct that all inheritance succession, or legacy taxes or duties be paid out of my residuary estate, so that the foregoing bequests and legacies shall be free from any deduction on account of such tax or duty.

Tenth. I give, devise, and bequeath unto my son, Stanley Field, and Arthur B. Jones, both of Chicago, State of Illinois, and the survivor of them, and to their successors as trustees, all of the rest, residue, and remainder of my property and estate, real, personal, and mixed, and wherever situated, to have and to hold upon the trusts, terms, and conditions following:

(a) Said trustees shall have full power and authority to sell, assign, transfer, and convey any and all or any part of the trust property which shall at any time form a part of the trust estate under this will and convert the same into cash at such time or times and upon such terms or conditions as to my said trustee shall seem best, and to make, execute, and deliver all deeds of conveyances and other instruments in writing as may be in the opinion of said trustees necessary or proper for the best management of said trust estate; to execute leases of any real estate which shall form a part of said trust at any time, at such rental and for such length of time, not exceeding two hundred (200) years, as they may think best. They shall

14 also have power to erect buildings or to change, alter, or make

additions to any existing buildings upon any real estate forming a part of said trust estate, and also to retain any investments in real or personal property which shall come into their possession under this will as trustees, for such time as they shall deem it for the best interests of the trust so to do; and also to invest and reinvest from time to time any funds coming into their hands as trustees as aforesaid, and not paid out to beneficiaries under the provisions of this will, in such real or personal property, including stocks of corporations, as shall commend themselves to the business judgment of said trustees; and to do all other acts in relation to the said trust estate or in relation to its disposition or investment which in the judgment of said trustees shall be needful or desirable to the proper and advantageous management of said trust estate, so as to protect the same and to make the same productive; it being my intention by this will to vest in my said trustees authority to do all things in regard to the said trust estate in the same manner and to the same extent as I might or could do if living, which shall seem expedient and best to them, in order to carry out the provisions and intents of this my last will and testament.

(b) The said trust shall be divided by said trustees as soon as may be after the same shall come into their possession, into separate trust funds, as follows:

(1) If my wife, Kate Field, shall survive me, one-third ( $\frac{1}{3}$ ) of said trust estate shall be set apart and held as a separate trust fund for the benefit of my said wife, and the net income derived therefrom shall be paid to my wife during her life, and from and after her death the net income from one-half ( $\frac{1}{2}$ ) of said share of said trust estate shall be paid to such persons, and in such shares, as she shall appoint by her last will and testament.

15 (2) Three-twelfths ( $\frac{3}{12}$ ) of said trust estate, subject to the provision above made for my wife, shall be set apart and held as a separate trust fund for each of my two sons, Stanley and Norman, and two-twelfths ( $\frac{2}{12}$ ) thereof as a fund for each of my three daughters, Maud, Laura, and Florence Josephine.

In setting apart and dividing said trust estate into the separate funds above specified, the trustees may set apart and allot undivided interests in different parts and parcels of said trust estate, and the judgment of said trustees in making said division shall be final and conclusive upon all parties in interest and said trustees may make joint investments on behalf of said separate trust funds; the several trust funds to be interested in such joint investments in proportion to their several investments therein. The net income from the several funds so created for my respective children shall be paid over to them during their respective lives, at such times and in such amounts as my trustees in their discretion may determine to be for the welfare of such respective children, but so as in any event to provide liberally for their support and maintenance, and any unex-

pected income shall be added to the principal of the particular fund from which the same is received. At the death of each child the payment of income shall be continued under like discretionary powers to his or her lawful issue per stirpes until the death of the last survivor of my grand children who shall be living at my death, at which date each separate trust fund then in the hands of my trustees shall be divided per stirpes among the then surviving lawful issue of the son or daughter for whom the same was held.

If at any time during the duration of the said trust there shall be a failure of lawful surviving issue of either of my said children at or after his or her death, the trust fund held for such child, with its accumulations, shall then be equally divided among the remaining funds created by this paragraph, and become a part thereof; subject, however, to the qualification that each of my children dying without leaving any lawful issue surviving at the date of his or her death shall have power to dispose by last will and testament of one-third ( $1/3$ ) of the trust fund then held for him or her, and provided further, that if the trust fund created for my son Stanley shall have been paid over to him, then the share of any trust fund which would have been added to the trust fund created for him had the same continued to be held in trust, shall be paid over and delivered to him if he shall then be living, and if he shall not then be living shall be paid over and disposed of as he shall direct by his last will and testament, and in default of any disposition thereof by his last will and testament, then to the persons who would at the date of such payment have been his heirs at law under the statutes of the State of Illinois if he had then died intestate.

It is my will and I direct that the said trustees shall convey, transfer, and pay over to my said son Stanley, at any time when he shall make request therefor, the trust fund created for him by the foregoing provisions of this will. I also authorize and empower said trustees in their discretion to pay over to my said son, Norman, upon his request, at any time or times after he shall reach the age of forty (40) years, an amount or amounts in the aggregate not exceeding one-fourth ( $1/4$ ) of the trust fund created for him by the foregoing provisions of this will.

If either of my children should die before me, or after me, but before the division of the estate into separate funds as aforesaid, leaving lawful issue, a fund shall be created for such issue, consisting of the proportion of my residuary estate which would have been set apart under the foregoing provisions of this will for the parent if living.

Upon the death, resignation, refusal, or inability to act, or further act, of either of the said trustees hereinbefore named, I appoint James Simpson, of the city of Chicago, trustee, to fill the vacancy so arising, to the end that there may be at least two trustees under this will; and in the event of the said James Simpson failing for

any cause to act or further act as trustee hereunder, as above provided, or in case any other vacancy in said trusteeship shall occur from any cause whatsoever, The Northern Trust Company, a corporation organized under the laws of the State of Illinois, is hereby appointed trustee and successor in trust under this will; and in any event at the expiration of ten (10) years from the date of my death the said The Northern Trust Company is hereby appointed a trustee hereunder, and the trustees for the time being acting under this will shall have and exercise equal rights and powers as such trustees, and if and when the said The Northern Trust Company shall become the sole trustee under this will by reason of the death, resignation, or inability to further act of the persons hereinbefore named as trustees, or successors in trust, the said The Northern Trust Company shall have and possess all the rights, powers, duties, and authority vested in the original trustees herein named.

Said trustees shall not be required to give any bond or security for the performance of their duties as trustees, and I exempt every trustee under this will from any liability for loss occurring without his or its own wilful default, and allow him to retain and allow his co-trustees, all such proper charges and expenses as are incidental to

the trusteeship, and purchasers from the trustees shall not be  
18 holden to see to the application of the purchase money. And

I authorize the trustees under this will to receive a reasonable compensation for their services as such trustees, having due regard to the time and labor they may respectively contribute to the duties of their trust. If at any time in the management of any of said trust funds or estate under the charge of three trustees there shall arise any conflict or difference of opinion among the trustees, I direct that the judgment and opinion of a majority of the trustees in regard to the conduct and management of the trust funds or estate shall prevail.

If the period during which the trustees are vested with discretion in regard to the amount of the net income from the several trust funds to be paid to the several beneficiaries, the residue of such income to be accumulated, shall exceed the time allowed by law for the exercise of such discretion and accumulation, then and in every such case the right to exercise such discretion as to the amount of income paid to the beneficiaries shall continue during the period of twenty-one (21) years from and after my death, and for such longer period, if any, as may be lawful, and during the residue of the term of said trust the entire net income from the several trust funds shall be paid from time to time to the respective beneficiaries who are entitled to participate therein, per stirpes.

The trustees under this will are directed to keep full and accurate books of account, showing all their transactions as such trustees, which shall at all reasonable times be open to the inspection of the beneficiaries interested in the several trusts, and on or before March



1st in each year said trustees shall furnish to each beneficiary entitled to share in the income of either of the said trusts a written statement showing the condition of the trust estate and the  
19 income received, and the disbursements and investments made by the trustees during the last preceding calendar year in connection with the trust in which such beneficiary is interested.

In the event of any vacancy occurring in the trusteeship not herein specifically provided for, any court of competent jurisdiction holding its session in the city of Chicago, State of Illinois, shall have power, upon the joint application in writing of all the beneficiaries hereunder, then of lawful age, to appoint the person or persons (or corporation) who shall be nominated by the said beneficiaries to be a successor or successors in trust hereunder, either with or without bond, as may be specified by request of the beneficiaries, but such power shall not be exercised so long as The Northern Trust Company is able and willing to administer the trusts hereby created, either alone or as co-trustee with one or more of the trustees hereinbefore named.

The trusts created by this will are made for the purpose of providing a suitable support and maintenance for the respective beneficiaries hereinbefore named, and such beneficiaries shall have no power to anticipate or assign the income which shall be payable to them respectively under the provisions of this will, and such income shall not be liable to be taken away from any such beneficiaries by process of law or otherwise.

Eleventh. I hereby nominate and appoint Stanley Field and Arthur B. Jones executors of this my last will and testament, and in the event of either of them failing to qualify or to act, or further act, as executor under this will, then I appoint James Simpson executor or co-executor under this will, and direct that neither of said parties be required to give bond or security as such executor.

I further direct my executors to pay over to my wife hereinbefore named one-third ( $\frac{1}{3}$ ) of the net income received by them as executors  
20 from such part of my estate as shall remain in their hands from time to time, until the same shall be turned over to the trustees hereinbefore appointed in this will.

Although I have been living in England for some years for business reasons, I have always retained my citizenship in Chicago and have never changed or intended to change my legal residence, and it is my direction that my original will be probated at Chicago, and that the principal administration of my estate be there.

In witness whereof I have hereunto set my hand and seal this eighth day of November, A. D. 1911.

JOSEPH N. FIELD. [SEAL.]

The foregoing instrument was, on the day of the date thereof, signed, sealed, and declared by the said Joseph N. Field to be his last will and testament, in the presence of us, who, at his request

and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

JOHN P. WILSON.  
WILLIAM B. McILVAINE.  
JOHN P. WILSON, Jr.  
WILLIAM R. DICKINSON.

Will proved and admitted to record in open court this 11 day of Aug., A. D. 1914.

DANIEL H. GREGG, *Probate Judge.*

STATE OF ILLINOIS,  
*County of Cook, ss:*

In the Probate Court of Cook County proved and admitted to record in open Court this 11th day of August, A. D. 1914.

JOHN A. CIVENKA, *Clerk.*

Filed Aug. 11, 1914.

JOHN A. CIVENKA, *Clerk.*

21 I, Joseph N. Field, do make the following codicil to my last will and testament, bearing date the eighth day of November, A. D. 1911, viz:

I give to my son Stanley Field and my friend Arthur B. Jones, of Chicago, as trustees, the sum of five hundred thousand dollars (\$500,000.00), to be delivered to them either in cash or securities selected by my executors, at their market value, said fund to be held and used, both principal and income, for the aid and relief of persons who shall have been in the employ of Marshall Field & Company for not less than ten (10) years prior to my death, and who shall be in need of assistance by reason of sickness, age, disability, or other cause.

The time of service above specified need not be continuous, and may include service rendered as well to the copartnership as to the corporation doing business under the name of Marshall Field & Company.

The distribution of the charitable fund hereby created may in the discretion of said trustees extend to the aid of the families of deceased employees who if living would have come within the class of beneficiaries above designated, in cases where such families shall be in need of aid. It is my will that the entire fund, both principal and income, be appropriated and used for the purposes above specified within twenty (20) years after my death, it being my intention to provide aid for persons (or their families) who shall have been in the employ of Marshall Field & Company during the time I have been interested in its business. It is further my will that the judgment and discretion of said trustees and their successors in trust in paying out any of said trust moneys to the members of the class of beneficiaries above designated shall not be subject to question or review.

22 My said trustees, and the survivor of them and their successors, shall have power at any time, and from time to time,



to appoint, by an instrument in writing signed by them or him, a successor or successors to fill any and all vacancies which may arise in said trusteeship, to the end that there may be two active trustees to carry out said trust.

I direct that all inheritance, succession, or legacy taxes or duties, if any, against the bequest made by this codicil, be paid out of my residuary estate, so that the foregoing bequest shall be free from any payment on account of any such tax or duty.

Except as modified by this codicil I confirm my said will.

In witness whereof I have hereunto set my hand and seal this thirty-first day of October, A. D. 1912.

JOSEPH N. FIELD. [SEAL.]

The foregoing instrument was, on this thirty-first day of October, A. D. 1912, signed by the above named Joseph N. Field, and declared by him to be a codicil to his last will and testament in the presence of us, who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

JOHN P. WILSON.

WILLIAM B. McILVAINE.

WILLIAM R. DICKINSON.

Codicil proved and admitted to record in open court this 11 day of Aug., A. D. 1914.

DANIEL H. GREGG, *Probate Judge.*

STATE OF ILLINOIS,

*County of Cook, ss:*

In the Probate Court of Cook County codicil proved and admitted to record in open court this 11 day of Aug., A. D. 1914.

JOHN A. CERVENKA, *Clerk.*

Filed Aug. 11, 1914.

JOHN A. CERVENKA, *Clerk.*

(Endorsed:) Will of Joseph N. Field. Recorded in probate documentary record of wills, book 89, page 343.

## Exhibit "C."

(This return must be filed within one year after the day of death of the decedent whose estate is returned.)  
(Form No. 1)

TO BE FILLED IN BY INTERNAL REVENUE  
BUREAU.

TREASURY DEPARTMENT,  
INTERNAL REVENUE BUREAU.

TO BE FILLED IN BY COLLECTOR.  
Collection District.....

Audited by.....

Return for Estate Tax.  
(Title II, Act of September 8, 1916.)

Assessment List....., 191

AN ITEMIZED INVENTORY OF THE PROPERTY OF EVERY KIND OWNED BY DECEDENT AT TIME OF DEATH, WITH LEGAL  
DEDUCTIONS.

Decedent's name, Field, Kate.

(Write family name first, given names after.)

Residence at time of death, 1550 No. State Parkway Street, Chicago,  
(City or town.)

Date of death, April 29, 1917.

Illinois.

(State, Territory, or foreign country.)

NOTE.—This return is required of the estate of every nonresident of the United States, Hawaii, or Alaska leaving property or interests in the United States, Hawaii, or Alaska. This return is required of every resident's estate exceeding in gross value \$60,000 or in net value \$50,000. (See sections 202 and 203 of the act.)

PENALTIES.—1. For knowingly making false statement in this return, a fine not exceeding \$5,000, or imprisonment, or both. 2. For failure to file as required by section 205 of the act, a fine not exceeding \$500, with costs of suit. (See section 210 of the act.)

## The Gross Estate.

(See section 203 of the act and Articles IV to VIII of Regulations No. 27.)

NOTE.—If the decedent was a nonresident of the United States, Hawaii, or Alaska, there is to be entered in the space below only such items of the gross estate as at the time of the decedent's death were located or had their situs in the United States, Hawaii, or Alaska. All the property and interests of a resident decedent, regardless of their location or situs, are to be itemized below:

## 1. Real Estate.

1	2	3	4
Location.	Value at decedent's death.	Assessed valuation, current tax year.	Present market value (actual receipts if sold).
None.	\$ .	\$ .	\$ .
Total.....			

## 2. Personal Property.

## A. Stocks and bonds.

NOTE.—The final paragraph of section 202 of the act provides that for the purpose of the estate tax "stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States." All stocks and bonds of domestic corporations owned by a nonresident decedent for whose estate this return is made must be listed below:

1	2	3	4
No. of shares or bonds.	Description or designation.	Market value day of decedent's death.	Actual value if no market value.
300	Commonwealth Edison Co. @ 132	\$39,600	0
30	Commonwealth Edison Co., being fully paid subscription receipt for new stock @ 125	3,840	
100	Illinois Central R. R. Co. @ 1044	10,450	
100	Illinois Trust and Savings Bank @ 475	47,500	
100	Insurance Exchange Building Corporation, pld. @ 1044	20,500	
275	Midline Flow Company, first pld. @ 96	26,400	
100	Public Service Co., of Northern Illinois, pld. @ 100	10,000	
200	The Pullman Company @ 1544	31,100	
305	U. S. Government 3½ bonds due July 1, 1917, face value \$1,000 each, @ 100 and int.	305,500	
	Total	505,390	

25 B. Miscellaneous property.— Mortgages and promissory notes, insurance payable to the estate, cash, shares in action, good will of decedent's business, decedent's vested interest in other estates, personal effects, etc.

1	2	3	4
Designation or description.	Actual value at decedent's death.	Designation or description.	Actual value at decedent's death.
Mortgages (with maturity date): None.	0	Insurance: None.	0
Notes (with maturity date): None.		Cash in banks: Account in Illinois Trust and Savings Bank .....	9,731.25
		Choses in action: Miscellaneous:	
Total .....		Total .....	9,731.25

C. Transfers by deed of trust or other instruments, gifts, or sales without adequate consideration, made by decedent in contemplation of, or intended to take effect at, decedent's death. (See paragraph b and final paragraph, section 202, of the act.)

NOTE.—If decedent was a resident of the United States, Hawaii, or Alaska, the transfers described in section 202, paragraph b, of the act are taxable regardless of the location or status at any time of the transferred property. If decedent was a nonresident, there must be itemized below such transfers described in section 202, paragraph b, as conveyed property located or situated in the United States, Hawaii, or Alaska, either at the time the transfer was made or at the time of decedent's (the transferor's) death.

1	2	3	4	5	6	7	8
Name of transferee, donee, or beneficiary of decedent and address.	Date of transfer.	Manner of transfer.	Kind of property transferred.	Value at time of transfer.	Value at decedent's death.	Income accrued at decedent's death.	Total of columns 6 and 7.
None.				\$	\$	\$	\$
Total.....							

26

FOLD ALONG THIS SPACE.

D. Decedent's share in joint bank accounts, or in other property owned jointly with others. (See paragraph b, section 202, of the act.)

1	2	3	4	5	6
Description.	Location.	Original value decedent's share.	Value decedent's share at decedent's death.	Income accrued at decedent's death.	Total of columns 4 and 5.
None.....		\$.....	\$.....	\$.....	\$.....
TOTAL,					

  

Deductions from the gross estate. (See articles VIII and IX, regulations 37.)		Tax due.	
		Recapitulation—gross and net estate.	Separate portion of net estate and rate thereupon.
		Gross estate.	Total value.
1. Funeral expense.....	\$.....	1. Real estate.....	\$.....
2. Administration expense.....	.....	2. Stocks and bonds.....	395,290
3. Determined claims against the estate.....	.....	B. Mortgages, notes, insurance, cash, etc.....	9,721.22
4. Mortgages outstanding at decedent's death and not deducted in item 1 of gross income.....	.....	C. Transfers.....	.....
5. Determined losses during administration.....	.....	D. Share in jointly owned property.....	.....
6. Actual expenditures for support of decedent's dependents.....	.....	Total gross estate.....	405,011.22
7. Other charges allowed by the court.....	.....	*Total deductions.....	50,000
8. Specific exemption (\$50,000 if decedent was a resident of the United States, Hawaii, or Alaska; no exemption if a nonresident).....	50,000	Net estate for tax.....	355,011.22
Total deductions.....	\$.....		

  

Tax.	
Separate portion of net estate and rate thereupon.	
1. Portion not exceeding \$50,000.....	14%
2. Portion \$50,000-\$150,000.....	3%
3. Portion \$150,000-\$250,000.....	4%
4. Portion \$250,000-\$500,000.....	6%
5. Portion \$500,000-\$1,000,000.....	9%
6. Portion \$1,000,000-\$2,000,000.....	10%
7. Portion \$2,000,000-\$5,000,000.....	12%
8. Portion \$5,000,000-\$10,000,000.....	13%
9. Portion \$10,000,000-\$25,000,000.....	15%
10. Portion exceeding \$25,000,000.....	15%
Total tax.....	

Total gross estate wherever situated.....\$  
 NOTE.—This space to be filled in only if decedent at time of death was a nonresident of the United States, Hawaii, or Alaska.

\* NOTE.—If decedent was a nonresident, the share of total deductions to be taken here is a proportion equal to the proportion the gross estate within the United States, Hawaii, and Alaska is of the whole gross estate, wherever situated.

I, Stanley Field, the undersigned executor, do hereby solemnly swear that the above statement of gross and net estate of Kate Field, the above-named decedent, is in all respects true to the best of my knowledge and belief; that letters testamentary were granted upon the said estate on the 20th day of June, 1917, by the Probate Court at Cook County, Illinois; that no distribution from the estate to beneficiaries has to this date been made, and that this is a tentative return of the estate.

STANLEY FIELD,

Subscribed and sworn to before me at Chicago, Illinois, this 7th day of July, 1917.

WILLIAM R. DICKINSON,  
*Notary Public, Deputy Collector.*



27-28

*Exhibit "D."*

Form 1. Receipt for advance payments—regular taxes. United States Internal Revenue.

Collector's Office First District of Illinois  
At Chicago Date 7/11-1917  
Kate Field Estate of  
by Stanley Field Executor  
1550 N. State Parkway  
Chicago, Illinois

Form 58 ----- ; -----  
                    (Year)                      (Month)  
Form 23   1917                      ;   July  
                    (Year)                      (Month)  
                    Estate tax

-----  
(Description of collection, same  
as in column 3, Form 58, for  
Act 9/8-16 and 3/3-1917  
-----

unassessable items.)

\$13968.65.

Received payment July 11, 1917.

JULIUS F. SMETANKA,

*Collector of Internal Revenue.*

29 Letters testamentary—Probate Court of Cook County.

STATE OF ILLINOIS,

*County of Cook, ss:*

*The people of the State of Illinois, to all to whom these presents shall come, greeting:*

Know ye, that whereas Kate Field, late of the county of Cook and State of Illinois, died on or about the 29th day of April, A. D. 1917, as it is said, after having duly made and published her last will and testament, leaving at the time of her death property in this State, which may be lost, destroyed, or diminished in value if speedy care be not taken of the same; and inasmuch as it appears that Stanley Field has been appointed executor in and by the said last will and testament, to execute the same and to the end that said property may be preserved for those who shall appear to have a legal right or interest therein, and that the said will may be executed according to the request of the said testatrix we do hereby authorize him, the said Stanley Field as such executor to collect and secure all and singular the goods and chattels, rights and credits which were of the said Kate Field at the time of her decease, in whosoever hands

or possession the same may be found in this State, and well and truly to perform and fulfill all such duties as may be enjoined upon him by the said will, so far as there shall be property, and the law charge him and in general to do and perform all other acts which now or hereafter may be required of him by law.

Witness John A. Cervenka, clerk of the Probate Court of said county of Cook, and the seal of said court, this 20th day of June, A. D. 1917.

JOHN A. CERVENKA, *Clerk.*

30 STATE OF ILLINOIS,  
*County of Cook, ss:*

I, John F. Devine, clerk of the Probate Court of Cook County, in the State aforesaid, do hereby certify that the within is a true and correct copy of letters testamentary issued on the 20th day of June, A. D. 1917, to Stanley Field, now in force, as it appears from the originals on file and from the records of the Probate Court in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Probate Court, at Chicago, in said county, this 3d day of May, A. D. 1920.

JOHN F. DEVINE, *Clerk.*

*Exhibit "E."*

FEBRUARY 19, 1920.

H. W. MAGER, Esq.,  
*Acting Collector, U. S. Internal Revenue,  
Treasury Department, Chicago, Ills.*

DEAR SIR: I hand you herewith certified check for the sum of \$122,102.11 as payment for additional estate tax, with interest, determined by the Government in the case of Kate Field, deceased.

In paying this amount I do so under protest and compulsion, contending, as I do, that this tax is not justifiable under the laws of the United States or the regulations of the Treasury Department; that it is a tax assessed on the property in the estate of Joseph N. Field, over which Kate Field exercised a power of appointment, and that such tax is not justifiable under the law that was in force on April 29th, 1917, the date of the death of the said Kate Field. I further protest and contend that such tax has not properly been computed for the reason set forth in my claim for refund heretofore filed.

Yours, very truly,

(Signed)

STANLEY FIELD,  
*Executor.*

(Treasury Department, U. S. Internal Revenue, Form 46.)

Claim for refund—Taxes erroneously or illegally collected. Also amounts paid for stamps used in error or excess.

STATE OF ILLINOIS,  
County of Cook, ss:

(IMPORTANT—This claim should be forwarded to the collector of internal revenue to whom the tax was paid and must be accompanied by collector's receipt therefor.)

STANLEY FIELD,  
As Executor of Estate of Kate Field, Deceased.  
112 West Adams St., Chicago, Illinois.

This deponent being duly sworn according to law deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to the claim are true and complete:

1. Business engaged in by claimant: Executor estate Kate Field, deceased.
2. Character of assessment or tax: Additional estate tax.
3. Amount of assessment or stamps----- \$122,102.11
4. Amount now asked to be refunded (or such greater amount as is legally refundable)----- \$121,059.60
5. Date of payment of assessment or purchase of stamps, February 19, 1920.

Deponent verily believes that the amount stated in Item 4 should be refunded and claimant now ask and demands refund of said amount for the following reasons:

32 The above amount of \$121,059.60 now claimed on refund is that part of the total additional tax of \$122,102.11 paid on February 19th, 1920, which has been assessed by the Government on the estate of Kate Field, deceased, on the theory that that part of the trust estate of Joseph N. Field, deceased, over which Kate Field, deceased, exercised a power of appointment, was a part of the gross estate of Kate Field, deceased, within the meaning of the estate tax law.

The total value of the individual estate of Kate Field, deceased, as finally determined on review by the Commissioner of Internal Revenue, was \$450,675.69, from which deductions of \$78,458.68 were allowed, leaving a net individual estate subject to tax of \$372,217.01. The tax computed upon this sum is \$15,583.02, or \$1,032.35 in excess of the amount acknowledged by the Commissioner of Internal

Revenue to have been paid on the first return. Interest at 10% for thirty-six days (the period of the penalty) on this sum of \$1,032.35 amounts to \$10.16, making a total of \$1,042.51 as an additional tax on the individual estate of Kate Field, deceased, determined by the Commissioner of Internal Revenue to be due because of increased assessed values on said individual estate. Therefore, said amount of \$1,042.51 is not claimed on this refund, but the difference between said sum and the total additional tax of \$122,102.11, or \$121,059.60, represents, the tax fixed by the Commissioner of Internal Revenue, as aforesaid, on the estate of Kate Field, deceased, on the theory that that part of the trust estate of Joseph N. Fields, deceased, over which said Kate Field, deceased, exercised a power of appointment was a part of the gross estate of said Kate Field, deceased, within the meaning of the United States internal revenue law of 1916 as amended March 3rd, 1917, title 2; and said amount of \$121,059.60 is therefore claimed on refund.

33 It is contended by this claimant that no part of the Joseph N. Field, deceased, estate, over which said Kate Field had and exercised her power of appointment is or ought to be construed as a portion of the gross estate of said deceased appointor Kate Field, within the terms of said internal-revenue law of 1916, title 2, as amended; and that therefore no tax is due or collectible upon the estate as passing or to pass pursuant to the exercise of said power of appointment, and that said law did not authorize the assessment or collection of said tax, and said tax was paid under written protest.

And this deponent further alleges that the said claimant is not indebted to the United States in any amount whatever, and that no claim has heretofore been presented, except as stated herein, for the refunding of the whole or any part of the amount stated in item 3.

(NOTARIAL SEAL.)

Sworn to and subscribed before me this 3rd day of March, 1920.

(Signed) STANLEY FIELD,

*Executor of Estate of Kate Field, deceased.*

FRED M. OUTHOUSE, *Notary Public.*

/s/

(Name.)

(Title.)

(This affidavit may be sworn to before a deputy collector of internal revenue without charge.)

Filed March 4, 1920, 10 a. m., in internal-revenue office,  
Chic.

Receipt attached to claim for refund as follows:

(Copy)

(Treasury Department, U. S. Internal Revenue Form 803.)

ESTATE TAX RECEIPT.

Executor's copy (in duplicate).

Collector First District of Illinois. At Chicago, Ill. Date Feb. 19, 1920.

NOTE.—Payment of the tax indicated by the return on Form 706 is not conclusive as to ultimate tax liability. An investigation will be conducted to verify the accuracy of the return. If tax in excess of the amount indicated by the return is disclosed and one year and 180 days have elapsed since the date of decedent's death interest will attach at the rate of 10 per centum per annum on and after the expiration of 30 days from receipt of notice of such excess tax. Section 407, Revenue Act of 1918.

Estate of Kate Field, deceased.  
STANLEY FIELD,  
219 W. Adams Street,  
Chicago, Ill.  
Received payment, Feb. 20, 1920,  
H. H. MAGER,  
By \_\_\_\_\_  
Acting Collector of Internal  
Revenue First District Illinois.

List 23A Feb. _____	(Month)
Date of death, April 29, 1917. _____	
Tax according to return \$ _____	Interest 6% _____
days _____	\$ _____
_____	% penalty _____
\$ _____	Balance of tax according to Commissioner's notification _____
Int. 10% 10 days _____	\$120,909.58
	1,192.53
Total _____	\$122,102.11

Received payment,  
Paid under protest,  
Collector of Internal Revenue.

II. DEFENDANT'S DEMURRER. FILED MAY 8, 1920.

Defendant demurs to the plaintiff's petition on the ground that the facts stated therein do not constitute a cause of action.

FRANK DAVIS, Jr.,  
Assistant Attorney General.

T. K. SCHMUCK,

FRED K. DYAR,

Special Assistants to the Attorney General.

III. ARGUMENT AND SUBMISSION OF DEMURRER.

On June 1, 1920, the demurrer in this case was argued and submitted by Mr. T. K. Schmuck, for the defendant, and by Mr. William B. Hale, for the plaintiff.

IV. OPINION OF THE COURT BY HAY, J., ON DEMURRER.  
FILED JUNE 7, 1920.

## OPINION.

HAY, Judge, delivered the opinion of the court:

This is a petition filed in this court by Stanley Field, executor of the estate of Kate Field, deceased, to recover the sum of \$121,059.60, which it is alleged was the amount of a tax wrongfully assessed and collected from said estate by the collector of internal revenue of the United States for the first district of Illinois. To this petition of the plaintiff the defendants have demurred.

The plaintiff alleges in his petition that on November 8, 1911, Joseph N. Field, a citizen of Illinois, executed his will by which he devised the residue of his estate, after payment of certain specific legacies, to trustees. One of the provisions of said will was as follows: "If my wife, Kate Field, shall survive me, one-third ( $\frac{1}{3}$ ) of said trust estate shall be set apart and held as a separate trust fund for the benefit of my said wife, and the net income derived therefrom shall be paid to my wife during her life, and from and after her death the net income from one-half ( $\frac{1}{2}$ ) of said share of said trust estate shall be paid to such persons, and in such shares as she shall appoint by her last will and testament." Joseph Field died April 29, 1914, and his will was probated in the probate court of Cook County, Ill.

On January 7, 1916, Kate Field executed her will wherein she executed the power of appointment given her by the will of Joseph Field. Kate Field died on April 29, 1917, and her will was probated in the probate court of Cook County, Ill., and the plaintiff was appointed executor of her estate. The collector of internal revenue, claiming to act under the income-tax act of 1916, 39 Stat., 756, and the regulations issued thereunder by the Commissioner of Internal Revenue of the United States, included as part of the gross estate of Kate Field the appointed estate passing under the execution by her of the general power of appointment given her by the will of Joseph Field, and proceeded to assess and collect an inheritance tax on the net value thereof. The plaintiff paid said tax under protest.

The income-tax act of September 8, 1916, among other things, provides (39 Stat., 777): "Sec. 202. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated: (a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate. (b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to

which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth."

The questions for determination are whether or not the property passing by the execution of the general power of appointment authorized by the will of Joseph Field is subject to the payment of the tax provided for in the income-tax act above quoted, and whether the passing of such an estate is such a transfer of property as is contemplated by paragraph (b) of section 202 of said act.

37 It is a cardinal rule that statutes imposing taxes upon the citizen must be construed in favor of the taxpayer. The intent of Congress to impose a tax upon any specific property or estate should be expressed in clear and unambiguous language. In the case of *Gould v. Gould*, 245 U. S., 151, 153, the court said: "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government and in favor of the citizen."

In the act of 1916 there is no provision for taxing property passing under a general power of appointment exercised by a decedent by will, nor is it possible by a fair or reasonable construction to include appointed property in the property mentioned in paragraph (a) of section 202 of the act.

Appointed property is something definite and specific, which Congress could have taxed under the provisions of the act of 1916 had it seen fit to do so; and that Congress so regarded it is shown by the fact that in the act of 1918 amending the act of 1916 Congress specifically provided: "Sec. 402 (e). To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in, possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth." 40 Stat., 1097.

We do not think that the transfer of appointed property is such a transfer as is provided for in section 202, paragraph (b) of the act of 1916. The provisions of the statute do not impose a tax upon gifts made by will, but relates to transfers made before death.

For the foregoing reasons the demurrer of the defendants must be overruled, and it is so ordered.

The majority of the court concur in this opinion.

#### V. SUBMISSION OF CASE ON AGREED STATEMENT OF FACTS.

On June 28, 1920, this case was submitted on agreed statement of facts by Mr. Walter Bruce Howe, for the plaintiff, and by Mr. Assistant Attorney General Frank Davis, jr., for the defendant.

## 38 VI. FINDINGS OF FACT AND CONCLUSION OF LAW. FILED JUNE 28, 1920.

(Exhibits referred to attached.)

This case having been heard by the Court of Claims the court, upon the evidence, which consists of an agreed statement of facts made by the plaintiff through his attorney and the United States by its Assistant Attorney General, makes the following

## FINDINGS OF FACT.

## I.

The plaintiff, Stanley Field, is the duly appointed executor of the estate of Kate Field, deceased, who died testate a resident of Chicago, Illinois, on April 29, 1917. A duly authenticated copy of the record of plaintiff's said appointment as such executor is attached hereto and made a part hereof as "Exhibit D-a."

## II.

The will of Kate Field, deceased, was duly admitted to probate by the Probate Court of Cook County, Illinois, on June 20, 1917, a copy of which will being attached hereto and made a part hereof as "Exhibit A." By said last will and testament said Kate Field disposed of her individual property as follows:

39 (a) Various specific legacies aggregating in value ninety-three thousand five hundred dollars (\$93,500.00);

(b) All the rest, residue and remainder of her estate testatrix gave in equal shares to her three daughters, Maud Field Clegg, Laura Field Clegg, and Josephine Field Crossley.

## III.

That Joseph N. Field, the husband of Kate Field, died testate April 29, 1914, a resident of Chicago, Illinois. The last will and testament and codicil of said Joseph N. Field was duly admitted to probate in the Probate Court of Cook County, Illinois, on August 11, 1914.

## IV.

That by the last will and testament of Joseph N. Field, after making certain specific bequests, he gave and devised all the residue of his estate to Stanley Field and Arthur B. Jones, of Chicago, as trustees, with full power and authority to sell, assign, transfer, and convey the same and with direction to divide said estate into separate trust funds, the first of which trust funds was provided as follows:

"(b) The said trust shall be divided by said trustees as soon as



may be after the same shall come into their possession, into separate trust funds, as follows:

"(1) If my wife, Kate Field, shall survive me, one-third ( $\frac{1}{3}$ ) of said trust estate shall be set apart and held as a separate trust fund for the benefit of my said wife, and the net income derived therefrom shall be paid to my wife during her life, and from and after her death the net income from one-half ( $\frac{1}{2}$ ) of said share of said trust estate shall be paid to such persons, and in such shares as she shall appoint by her last will and testament.

40     "(2) Three-twelfths (3-12) of said trust estate, subject to the provision above made for my wife, shall be set apart and held as a separate trust fund for each of my two sons, Stanley and Norman, and two-twelfths (2-12) thereof as a fund for each of my three daughters, Maud, Laura, and Florence Josephine."

The will in substance provided for the continuance of the trust until the death of the last surviving grandchild of the testator who was living at the time of his decease. Subject to the devise to Kate Field the income from the trust estate was required to be paid in the proportions set forth in paragraph b (2) of the will to the beneficiaries named therein or to their issue per stirpes. On the termination of the trust the estate, then undistributed, was required to be divided among the beneficiaries named in paragraph b (2) of the will or to their issue per stirpes in the proportion there specified.

Said testator further provided that said trust should continue until the death of the last survivor of testator's grandchildren living at the time of his death. Said grandchildren were eleven in number at the date of the death of Kate Field, deceased. A copy of said will is attached hereto and made a part hereof as Exhibit "B."

## V.

Said Kate Field, by her last will and testament, exercised the power of appointment so given her by the will of her said husband, Joseph N. Field, and as follows:

"Seventh. Under the will of my late husband, Joseph N. Field, I am given the power to dispose of the net income from one-half of a trust fund from and after the date of my death, I receiving  
41     the whole of the net income from said trust fund during my life, and in the exercise of said power I do hereby direct that the income over which I have the power of appointment as aforesaid shall be paid in equal shares to my children surviving at the date of the respective payments which shall be made out of the income from said trust fund; provided, however, that the surviving issue of any deceased child shall stand in the place of and receive the share of said net income which such deceased child would have been entitled to receive if living at the date of the respective payments out of said income."

## VI.

The internal revenue act of the United States of 1916, Title II, in effect September 9, 1916, as amended March 3, 1917, provided in section 201 as follows:

"That a tax (hereinafter in this Title referred to as 'The Tax') equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this act, whether a resident or nonresident of the United States:

"1½ per centum of the amount of such net estate not in excess of \$50,000.

"3 per centum of the amount by which such net estate exceeds \$50,000, and does not exceed \$150,000, etc."

Said law further provided in section 202 as follows:

"That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

"(a) To the extent of the interest therein on the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate.

"(b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title."

## VII.

Said United States internal revenue act of 1916, as amended, provided in section 212 that the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make such regulations and prescribe and require the use of such books and forms as he might deem necessary to carry out the provisions of said Title II. Said commissioner thereupon issued Article XI, regulations No. 37, revised May, 1917, providing as follows:

"Property passing under a general power of appointment is to be included as a portion of the gross estate of a decedent appointor."

## VIII.

Said Stanley Field as executor of the estate of Kate Field, deceased, made a tentative return for estate tax to the collector of inter-

nal revenue of the United States for the first district of Illinois, and filed said return in the office of said collector on the 11th day of July, 1917; a copy of said return showed the net individual estate of Kate Field, deceased, subject to tax, amounted to the sum of \$355,011.22. A tax thereon, amounting to the sum of \$14,550.67 was duly paid by Stanley Field to said collector of internal revenue on the 11th day of July, 1917 (the actual amount in cash paid by said Stanley Field, executor, was \$13,968.65, being said sum of \$14,550.67 less the statutory discount of 5 per cent); and said executor duly received a receipt for said payment of tax from said collector. A copy of said receipt is attached hereto and made a part hereof as Exhibit "D."

Said return for estate tax so made by said Stanley Field, as executor of said estate, did not include any of the property of the estate of Joseph N. Field, deceased, held in trust as above described, or of the value of the income from said property over a portion of which said income said Kate Field, deceased, had and exercised the power of appointment above described.

### IX.

And afterward the Commissioner of Internal Revenue of the United States made an investigation of the said return and of the value of the individual estate of said Kate Field, deceased, and of the value of said appointed estate, and increased the assessed value of said individual estate and fixed an assessed value on said appointed estate, and thereupon assessed an additional estate tax (over and above the amount paid as aforesaid) amounting to the sum of \$121,619.44, and the said collector of internal revenue did, on December 12, 1919, demand of said Stanley Field, executor, that he pay said additional estate tax of \$121,619.44 within thirty days thereafter.

And thereafter, in view of certain errors in the assessment of said additional tax, on January 4, 1920, said Stanley Field, executor, filed with the collector of internal revenue for the first district of Illinois, a claim for abatement, claiming an abatement in said additional tax of the sum of \$23,803.65, by reason of certain alleged errors in the assessed value so made by said commissioner.

And thereupon said Commissioner of Internal Revenue reexamined said assessed values and made certain reductions therein, so that the assessed values as finally determined by said commissioner were as follows:

Assessed value of said individual estate of Kate Field, deceased.....	\$450, 675. 69
Assessed value of said appointed estate.....	1, 449, 563. 57
Total alleged gross estate.....	\$1, 900, 239. 26
Less deductions allowed.....	78, 458. 68
Total alleged net estate.....	\$1, 821, 780. 58

And upon the alleged net value so fixed said commissioner determined that a total additional tax was due amounting to the sum of

\$120,909.58; and on February 19, 1920, H. W. Mager, then acting collector of internal revenue of the United States for the first district of Illinois, demanded of said Stanley Field, executor, as an additional estate tax, alleged to be due under said internal revenue act of the United States of 1916, Title II, the said sum of \$120,909.58, and a penalty of \$1,192.53, making a total additional tax and penalty so demanded of \$122,102.11. And said acting internal revenue collector did then and there threaten said Stanley Field, executor, in  
45 the event of non-payment, with certain penalties provided by the statutes of the United States for the punishment of delinquent taxpayers.

## X.

And thereafter, on February 20, 1920, said Stanley Field, executor, paid to said acting collector of internal revenue the said total sum of \$122,102.11, under written protest, a copy of which said protest is attached hereto and made a part hereof as Exhibit "E."

## XI.

And thereafter, on March 3, 1920, said Stanley Field, executor, filed in the office of said acting internal revenue collector a claim for refund, claiming said amount now sued for, being the sum of \$121,059.60. Said sum of \$121,059.60 is that part of the total additional tax and interest which was assessed by said commissioner of internal revenue on the theory that that part of said trust estate of Joseph N. Field, deceased, over which said Kate Field, deceased, exercised a power of appointment, was a part of the gross estate of Kate Field, deceased, within the meaning of said internal revenue law of 1916, Title II, and does not include any part of said additional tax which was fixed on account of the increased assessment so determined by said Commissioner of Internal Revenue on the individual estate of Kate Field, deceased. A copy of said claim for refund, with a copy of the receipt thereto attached, is attached hereto and made a part hereof as Exhibit "F."

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## XII.

And afterward, on, to wit, the 29th day of March, 1920, said claim for refund so filed by said Stanley Field, executor, was considered and rejected by said Commissioner of Internal Revenue.

No part of said sum of \$121,059.60 has ever been repaid to said Stanley Field, executor.

*Conclusion of law.*

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of \$121,059.60. It is therefore adjudged and ordered by the court that

the plaintiff recover of and from the United States the sum of one hundred and twenty-one thousand fifty-nine dollars and sixty cents (\$121,059.60).

47

*Exhibit "A."*

Last will and testament of Kate Field, deceased.

I, Kate Field, of Chicago, Ill., do make this my last will and testament as follows:

First. I direct that all claims against my estate and also all inheritance taxes, so called, be paid as soon as practicable after my death. It is my will that the bequests given herein, other than to my residuary legatees, be paid free from any deduction by reason of inheritance taxes, or any other deduction whatsoever.

Second. I give and bequeath five thousand dollars (\$5,000.00) to Mrs. Libby Bell, of Rushville, Ill.

Third. I give and bequeath two thousand dollars (\$2,000.00) to Mrs. Ida M. Eddy.

Fourth. I give to my son Stanley Field, as trustee, sixty-five hundred dollars (\$6,500.00), to be kept invested, and the net income derived therefrom to be paid to Ella Campbell for and during her life; the principal of said trust fund to go to my residuary legatees upon her death.

Fifth. I give and bequeath to each of my three sons-in-law, Henry Gordon Clegg, William G. Clegg, and Sir Kenneth Crossley, Bart., the sum of twenty-five thousand dollars (\$25,000.00).

Sixth. I give and bequeath to my niece, Grace James Gillette, the sum of five thousand dollars (\$5,000.00).

Seventh. Under the will of my late husband, Joseph N. Field, I am given the power to dispose of the net income from one-half of a trust fund from and after the date of my death, I receiving  
48 the whole of the net income from said trust fund during my life, and in the exercise of said power I do hereby direct that the income over which I have the power of appointment as aforesaid shall be paid in equal shares to my children surviving at the date of the respective payments which shall be made out of the income from said trust fund; provided, however, that the surviving issue of any deceased child shall stand in the place of and receive the share of said net income which such deceased child would have been entitled to receive if living at the date of the respective payments out of said income.

Eighth. All the rest, residue and remainder of my estate I give and bequeath in equal shares to my three daughters, Maud Field Clegg, Laura Field Clegg and Josephine Field Crossley.

Ninth. I appoint my son Stanley Field executor of this my last will and testament, and direct that no bond or security be required of him as such executor.

In witness whereof I have hereunto set my hand and seal this 7th day of January, A. D. 1916.

(Signed)

KATE FIELD. [SEAL.]

The foregoing instrument was, on the day of the date thereof, signed, sealed, and declared by the said testatrix, Kate Field, to be her last will and testament, in the presence of us, who, at her request and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

(Signed)

CHARLES E. MARTIN.

FRED H. REYNOLDS.

JAMES M. BARNES.

49

*Exhibit "B."*

Last will and testimony of Joseph N. Field.

I, Joseph N. Field, of Chicago, State of Illinois, do hereby make, publish and declare this my last will and testimony as follows, hereby revoking all prior wills:

First. I direct my executors to pay all just debts and claims against my estate within a reasonable time after my decease.

Second. I give, devise, and bequeath to my wife, Kate Field, in case she shall be living at the time of my death, all my right, title and interest in and to the premises in the town of Bowdon, Cheshire, England, near Manchester, known as "Ashleigh," as well as any other premises which we may be occupying as a family residence at the date of my death, and also in and to all the household furniture, books, pictures, plate, linen, horses, carriages, harnesses and contents of stable, and other personal property used in and about or in connection with the said premises above mentioned, at the time of my decease.

Third. I give and bequeath to each of my nephews, Dwight James, Howard James and Philip James, and to each of my nieces, Mrs. Grace James Gillett, Bertha Dibblee King, Frances Dibblee Sprague, Ethel Field Beatty, Minna Field Gibson and Florence Field Lindsay, provided they shall respectively be living at my death, the sum of ten thousand dollars (\$10,000.00) as a remembrance.

Fourth. I give and bequeath to my cousin, Lucy Ann Field, of New Jersey, daughter of my late uncle William Field, in case she shall be living at the time of my death, the sum of five thousand dollars (\$5,000.00).

Fifth. I give and bequeath to Paula Reif Huck, if she be living at the time of my death, the sum of ten thousand dollars (\$10,000.00).

50 Sixth. I give and bequeath to Arthur B. Jones, of Chicago, if he be living at the time of my death, the sum of ten thousand dollars (\$10,000.00).

Seventh. I give and bequeath to Mrs. Ida M. Eddy, if she be living at the time of my death, and shall not have contracted a second marriage, the sum of two thousand dollars (\$2,000.00).

Eighth. I give and bequeath to Ella Campbell, if she shall be in my employ at the time of my death, the sum of three hundred pounds sterling (£300).

Ninth. I direct that all inheritance, succession, or legacy taxes or duties be paid out of my residuary estate, so that the foregoing bequests and legacies shall be free from any deduction of such tax or duty.

Tenth. I give, devise, and bequeath unto my son, Stanley Field and Arthur B. Jones, both of Chicago, State of Illinois, and the survivor of them, and to their successors as trustees, all of the rest, residue and remainder of my property and estate, real, personal, and mixed, and wherever situated, to have and to hold upon the trusts, terms, and conditions following:

(a) Said trustees shall have full power and authority to sell, assign, transfer, and convey any and all or any part of the trust property which shall at any time form a part of the trust estate under this will and convert the same into cash at such time or times and upon such terms or conditions as to my said trustees shall seem best, and to make, execute, and deliver all deeds of conveyances and other instruments in writing as may be in the opinion of said trustees necessary or proper for the best management of said trust estate; to execute leases of any real estate which shall form a part of said trust at any time, at such rental and for such length of time, not exceeding two hundred (200) years, as they may think best.

51 They shall also have power to erect buildings or to change, alter, or make additions to any existing buildings upon any real estate forming a part of said trust estate, and also to retain any investments in real or personal property which shall come into their possession under this will as trustees, for such time as they shall deem it for the best interests of the trust so to do; and also to invest and reinvest from time to time any funds coming into their hands as trustees as aforesaid, and not paid out to beneficiaries under the provisions of this will, in such real or personal property, including stocks of corporations as shall commend themselves to the business judgment of said trustees; and to do all other acts in relation to the said trust estate or in relation to its disposition or investment which in the judgment of said trustees shall be needful or desirable to the proper and advantageous management of said trust estate, so as to protect the same and to make the same productive; it being my invention by this will to vest in my said trustees authority to do all things in regard to the said trust estate in the same manner and to the same extent as I might or could do if living, which shall seem expedient and best to them, in order to carry out the provisions and intents of this my last will and testament.

(b) The said trust shall be divided by said trustees as soon as may be after the same shall come into their possession, into separate funds, as follows:

(1) If my wife, Kate Field, shall survive me, one-third ( $\frac{1}{3}$ ) of said trust estate shall be set apart and held as a separate trust fund for the benefit of my said wife, and the net income derived therefrom shall be paid to my wife during her life, and from and after her death the net income from one-half ( $\frac{1}{2}$ ) of said share of said trust estate shall



be paid to such persons, and in such shares as she shall appoint by her last will and testament.

52 (2) Three-twelfths ( $3/12$ ) of said trust estate, subject to the provision above made for my wife, shall be set apart and held as a separate trust fund for each of my two sons, Stanley and Norman, and two-twelfths ( $2/12$ ) thereof as a fund for each of my three daughters, Maud, Laura, and Florence Josephine.

In setting apart and dividing said trust estate into the separate funds above specified, the trustees may set apart and allot undivided interests in different parts and parcels of said trust estate, and the judgment of said trustees in making said division shall be final and conclusive upon all parties in interest and said trustees may make joint investments on behalf of said separate trust funds; the several trust funds to be interested in such joint investments in proportion to their several investments therein. The net income from the several funds so created for my respective children shall be paid over to them during their respective lives, at such times and in such amounts as my trustees in their discretion may determine to be for the welfare of such respective children, but so as in any event to provide liberally for their support and maintenance, and any unexpected income shall be added to the principal of the particular fund from which the same is received. At the death of each child the payment of income shall be continued under like discretionary powers to his or her lawful issue per stirpes until the death of the last survivor of my grand children who shall be living at my death, at which date each separate trust fund then in the hands of my trustees shall be divided per stirpes among the then surviving lawful issue of the son or daughter for whom the same was held.

If at any time during the duration of the said trust there shall be a failure of lawful surviving issue of either of my said  
53 children at or after his or her death, the trust fund held for such child, with its accumulations, shall then be equally divided among the remaining funds created by this paragraph, and become a part thereof; subject, however, to the qualification that each of my children dying without leaving any lawful issue surviving at the date of his or her death shall have power to dispose by last will and testament of one-third ( $1/3$ ) of the trust fund then held for him or her, and provided further, that if the trust fund created for my son Stanley shall have been paid over to him, then the share of any trust fund which would have been added to the trust fund created for him had the same continued to be held in trust, shall be paid over and delivered to him if he shall then be living, and if he shall not then be living shall be paid over and disposed of as he shall direct by his last will and testament, and in default of any disposition thereof by his last will and testament, then to the persons who would at the date of such payment have been his heirs at law under the statutes of the State of Illinois if he had then died intestate.

It is my will and I direct that the said trustees shall convey, transfer, and pay over to my said son Stanley, at any time when he shall



make request therefor, the trust fund created for him by the foregoing provisions of this will. I also authorize and empower said trustees in their discretion to pay over to my said son Norman, upon his request, at any time or times after he shall reach the age of forty (40) years, an amount or amounts in the aggregate not exceeding one-fourth ( $1/4$ ) of the trust fund created for him by the foregoing provisions of this will.

If either of my children should die before me, or after me but before the division of the estate into separate funds as aforesaid, leaving lawful issue, a fund shall be created for such issue, 54 consisting of the proportion of my residuary estate which would have been set apart under the foregoing provisions of this will for the parent if living.

Upon the death, resignation, refusal or inability to act, or further act, of either of the said Trustees hereinbefore named, I appoint James Simpson, of the city of Chicago, trustee, to fill the vacancy so arising, to the end that there may be at least two trustees under this will; and in the event of the said James Simpson failing for any cause to act or further act as trustee hereunder, as above provided, or in case any other vacancy in said trusteeship shall occur from any cause whatsoever, The Northern Trust Company, a corporation organized under the laws of the State of Illinois, is hereby appointed trustee and successor in trust under this will; and in any event at the expiration of ten (10) years from the date of my death the said The Northern Trust Company is hereby appointed a trustee hereunder, and the trustees for the time being acting under this will shall have and exercise equal rights and powers as such trustees, and if and when the said The Northern Trust Company shall become the sole trustee under this will by reason of the death, resignation or inability to further act of the persons hereinbefore named as trustees, or successors in trust, the said The Northern Trust Company shall have and possess all the rights, powers, duties, and authority vested in the original trustees herein named.

Said trustees shall not be required to give any bond or security for the performance of their duties as trustees, and I exempt every trustee under this will from any liability for loss occurring without his or its own wilful default, and allow him to retain, and allow his co-trustees, all such proper charges and expenses as are incidental to the trusteeship, and purchasers from the trustees shall not be holden to 55 see to the application of the purchase money. And I authorize the trustees under this will to receive a reasonable compensation for their services as such trustees, having due regard to the time and labor they may respectively contribute to the duties of their trust. If at any time in the management of any of said trust funds or estate under the charge of three trustees there shall arise any conflict or difference of opinion among the trustees, I direct that the judgment and opinion of a majority of the trustees in regard to the conduct and management of the trust funds or estate shall prevail.

If the period during which the trustees are vested with discretion in regard to the amount of the net income from the several trust funds to be paid to the several beneficiaries, the residue of such income to be accumulated, shall exceed the time allowed by law for the exercise of such discretion and accumulation, then and in every such case the right to exercise such discretion as to the amount of income paid to the beneficiaries shall continue during the period of twenty-one (21) years from and after my death and for such longer period, if any, as may be lawful, and during the residue of the term of said trust the entire net income from the several trust funds shall be paid from time to time to the respective beneficiaries who are entitled to participate therein, per stirpes.

The trustees under this will are directed to keep full and accurate books of account, showing all their transactions as such trustees, which shall at all reasonable times be open to the inspection of the beneficiaries interested in the several trusts, and on or before March 1st in each year said trustees shall furnish to each beneficiary entitled to share in the income of either of the said trusts a written statement showing the condition of the trust estate and the income received, and the disbursements and investments made by the trustees during the last preceding calendar year in connection with the trust in which such beneficiary is interested.

56 In the event of any vacancy occurring in the trusteeship not herein specifically provided for, any court of competent jurisdiction holding its session in the city of Chicago, State of Illinois, shall have power, upon the joint application in writing of all the beneficiaries hereunder, then of lawful age, to appoint the person or persons (or corporation) who shall be nominated by the said beneficiaries to be a successor or successors in trust hereunder, either with or without bond, as may be specified by request of the beneficiaries, but such power shall not be exercised so long as The Northern Trust Company is able and willing to administer the trusts hereby created, either alone or as co-trustee with one or more of the trustees hereinbefore named.

The trusts created by this will are made for the purpose of providing a suitable support and maintenance for the respective beneficiaries hereinbefore named, and such beneficiaries shall have no power to anticipate or assign the income which shall be payable to them respectively under the provisions of this will, and such income shall not be liable to be taken away from any such beneficiaries by process of law or otherwise.

Eleventh. I hereby nominate and appoint Stanley Field and Arthur B. Jones executors of this my last will and testament, and in the event of either of them failing to qualify or to act, or further act, as executor under this will, then I appoint James Simpson executor or co-executor under this will, and direct that neither of said parties be required to give bond or security as such executor.

I further direct my executors to pay over to my wife hereinbefore named one-third ( $\frac{1}{3}$ ) of the net income received by them as

57        executors from such part of my estate as shall remain in their hands from time to time, until the same shall be turned over to the trustees hereinbefore appointed in this will.

Although I have been living in England for some years for business reasons, I have always retained my citizenship in Chicago and have never changed or intended to change my legal residence, and it is my direction that my original will be probated at Chicago, and that the principal administration of my estate be there.

In witness whereof I have hereunto set my hand and seal this eighth day of November, A. D. 1911.

JOSEPH N. FIELD. [SEAL.]

The foregoing instrument was, on the day of the date thereof, signed, sealed, and declared by the said Joseph N. Field to be his last will and testament, in the presence of us, who, at his request and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

JOHN P. WILSON.

WILLIAM B. McILVAINE.

JOHN P. WILSON, JR.

WILLIAM R. DICKINSON.

Will proved and admitted to record in open court this 11 day of Aug. A. D. 1914.

DANIEL H. GREGG, *Probate Judge.*

STATE OF ILLINOIS,

*County of Cook, ss:*

In the Probate Court of Cook County proved and admitted to record in open court this 11 day of August A. D. 1914.

JOHN A. CERVENKA, *Clerk.*

Filed Aug. 11, 1914.

JOHN A. CERVENKA, *Clerk.*

58        I, Joseph N. Field, do make the following codicil to my last will and testament, bearing date the eighth day of November, A. D. 1911, viz.:

I give to my son Stanley Field and my friend Arthur B. Jones, of Chicago, as trustees, the sum of five hundred thousand dollars (\$500,000.00), to be delivered to them either in cash or securities selected by my executors, at their market value, said fund to be held and used, both principal and income, for the aid and relief of persons who shall have been in the employ of Marshall Field & Company for not less than ten (10) years prior to my death, and who shall be in need of assistance by reason of sickness, age, disability, or other cause.

The time of service above specified need not be continuous, and may include service rendered as well to the copartnership as to the corporation doing business under the name of Marshall Field & Company.

The distribution of the charitable fund hereby created may, in the discretion of said trustees, extend to the aid of the families of

deceased employees who if living would have come within the class of beneficiaries above designated, in cases where such families shall be in need of aid. It is my will that the entire fund, both principal and income, be appropriated and used for the purposes above specified within twenty (20) years after my death, it being my intention to provide aid for persons (or their families) who shall have been in the employ of Marshall Field & Company during the time I have been interested in its business. It is further my will that the judgment and discretion of said trustees and their successors in trust in paying out any of said trust moneys to the members of the class of beneficiaries above designated shall not be subject to question or review.

My said trustees, and the survivor of them and their  
59 successors, shall have power at any time, and from time to time, to appoint, by an instrument in writing signed by them or him, a successor or successors to fill any and all vacancies which may arise in said trusteeship, to the end that there may be two active trustees to carry out said trust.

I direct that all inheritance, succession, or legacy taxes or duties, if any, against the bequest made by this codicil be paid out of my residuary estate, so that the foregoing bequest shall be free from any payment on account of any such tax or duty.

Except as modified by this codicil, I confirm my said will.

In witness whereof I have hereunto set my hand and seal this thirty-first day of October, A. D. 1912.

JOSEPH N. FIELD. [SEAL.]

The foregoing instrument was on this thirty-first day of October, A. D. 1912, signed by the above named Joseph N. Field and declared by him to be a codicil to his last will and testament in the presence of us, who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

JOHN P. WILSON.

WILLIAM B. McILVAINE.

WILLIAM R. DICKINSON.

Codicil proved and admitted to record in open court this 11 day of Aug., A. D. 1914.

DANIEL H. GREGG, *Probate Judge.*

STATE OF ILLINOIS,

*County of Cook, ss:*

In the Probate Court of Cook County codicil proved and admitted to record in open court this 11 day of Aug., A. D. 1914.

JOHN A. CERVENKA, *Clerk.*

Filed Aug. 11, 1914.

JOHN A. CERVENKA, *Clerk.*

(Endorsed:) Will of Joseph N. Field. Recorded in probate documentary record of wills, book 89, page 343.

Exhibit "C."

This return must be filed within one year after the day of death of the decedent whose estate is returned.

Form 706.

TO BE FILLED IN BY INTERNAL REVENUE BUREAU.  
Audited by.....

TREASURY DEPARTMENT.  
INTERNAL REVENUE BUREAU.  
Return for Estate Tax.  
(Title II, Act of September 8, 1916.)

TO BE FILLED IN BY COLLECTOR.  
Collection District.....  
Assessment List....., 191

AN ITEMIZED INVENTORY OF THE PROPERTY OF EVERY KIND OWNED BY DECEDENT AT TIME OF DEATH, WITH LEGAL DEDUCTIONS.

Decedent's name, Field, Kate.  
(Write family name first, given names after.)

Residence at time of death, 1550 No. State Parkway Street, Chicago,  
(City or town.)

Date of death, April 29, 1917.  
Illinois.  
(State, Territory, or foreign country.)

NOTE.—This return is required of the estate of every nonresident of the United States, Hawaii, or Alaska leaving property or interests in the United States, Hawaii, or Alaska. This return is required of every resident's estate exceeding in gross value \$60,000 or in net value \$50,000. (See sections 202 and 203 of the act.)  
PENALTIES.—1. For knowingly making false statement in this return, a fine not exceeding \$5,000, or imprisonment, or both. 2. For failure to file as required by section 205 of the act, a fine not exceeding \$500, with costs of suit. (See section 210 of the act.)

## The Gross Estate.

(See section 203 of the act and Articles IV to VII of Regulations No. 37.)

NOTE.—If the decedent was a nonresident of the United States, Hawaii, or Alaska, there is to be entered in the space below only such items of the gross estate as at the time of the decedent's death were located or had their situs in the United States, Hawaii, or Alaska. All the property and interests of a resident decedent, regardless of their location or situs, are to be itemized below:

## 1. Real Estate.

1	2	3	4
Location.	Value at decedent's death.	Assessed valuation, current tax year.	Present market value (actual receipts if sold).
None.	0	0	0
Total.....			

## 2. Personal Property.

## A. Stocks and bonds.

NOTE.—The final paragraph of section 202 of the act provides that for the purpose of the estate tax "stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States." All stocks and bonds of domestic corporations owned by a nonresident decedent for whose estate this return is made must be listed below:

1	2	3	4
No. of shares or bonds	Description or designation	Market value day of decedent's death	Actual value if no market value
300	Commonwealth-Edison Co. (c. 132)	\$28,000	\$
30	Commonwealth-Edison Co., being fully paid subscription receipt for new stock (c. 128)	3,840	
100	Illinois Central R. R. Co. (c. 1044)	10,450	
100	Illinois Trust and Savings Bank (c. 475)	47,500	
200	Insurance Exchange Building Corporation, pfd. (c. 104)	20,000	
275	Madison Plow Company, first pfd. (c. 98)	28,400	
100	Public Service Co., of Northern Illinois, pfd. (c. 100)	10,000	
200	The Pullman Company (c. 1554)	31,100	
205	U. S. Government 3% bonds due July 1, 1917, face value \$1,000 each, (c. 100 and 101)	205,000	
	Total	395,390	

652 B. Miscellaneous personalty.—Mortgages and promissory notes, insurance payable to the estate, cash, claims in action, good will of decedent's business, decedent's vested interest in other estates, personal effects, etc.

1	2	1	2
Designation or description.	Actual value at decedent's death.	Designation of description.	Actual value at decedent's death.
Mortgages (with maturity date): None.	0	Insurance: None.	0
Notes (with maturity date): None.		Cash in banks: Account in Illinois Trust and Savings Bank .....	9,721.22
		Claims in action: Miscellaneous:	
Total .....		Total .....	9,721.22



C. *Transfers by deed of trust or other instruments, gifts, or sales without adequate consideration, made by decedent in contemplation of, or intended to take effect at, decedent's death.* (See paragraph b and final paragraph, section 202, of the act.)

NOTE.—If decedent was a resident of the United States, Hawaii, or Alaska, the transfers described in section 202, paragraph b, of the act are taxable regardless of the location or status at any time of the transferred property. If decedent was a nonresident, there must be itemized below such transfers described in section 202, paragraph b, as conveyed property located or situated in the United States, Hawaii, or Alaska, either at the time the transfer was made or at the time of decedent's (the transferor's) death.

1	2	3	4	5	6	7	8
Name of transferee, donee, or beneficiary of decedent, and address.	Date of transfer.	Manner of transfer.	Kind of property transferred.	Value at time transfer.	Value at decedent's death.	Income accrued at decedent's death.	Total of columns 6 and 7.
				\$	\$	\$	\$
None.							
Total.....							

*D. Decedent's share in joint bank accounts, or in other property owned jointly with others. (See paragraph b, section 202, of the act.)*

4701-20-4

1		2		3		4		5		6	
Description.		Location.		Original value decedent's share.		Value decedent's share at decedent's death.		Income accrued at decedent's death.		Total of columns 4 and 5.	
Name.											
Total.											

  

Recapitulation—gross and net estate.		Tax due.	
Gross estate.	Total value.	Separate portion of net estate and rate thereupon.	Tax.
1. Real estate.....	\$ 395,290	Portion not exceeding \$50,000.....	14%
2. a. Stocks and bonds.....		1. Portion \$50,000-\$150,000.....	3 1/2%
b. Mortgages, notes, insurance, cash, etc.,.....	9,721.22	2. Portion \$150,000-\$250,000.....	4 1/2%
c. Transfers.....		3. Portion \$250,000-\$450,000.....	6 1/2%
d. Share in jointly owned property.....		4. Portion \$450,000-\$1,000,000.....	7 1/2%
		5. Portion \$1,000,000-\$2,000,000.....	9 1/2%
		6. Portion \$2,000,000-\$3,000,000.....	11 1/2%
		7. Portion \$3,000,000-\$4,000,000.....	12 1/2%
		8. Portion \$4,000,000-\$5,000,000.....	13 1/2%
		9. Portion \$5,000,000-\$10,000,000.....	15 1/2%
		10. Portion exceeding \$5,000,000.....	
Total gross estate.....	495,011.22	Total tax.....	
*Total deductions.....	50,000		
Net estate for tax.....	355,011.22		

  

Deductions from the gross estate. (See articles VIII and IX, Regulations 37.)	
1. Funeral expense.....	\$
2. Administration expense.....	
3. Determined claims against the estate.....	
4. Mortgages, notes, and other debts of decedent's estate, not determined in item 1 of gross income.....	
a. Determined losses during administration.....	
b. Actual expenditures for support of decedent's dependents.....	
5. Other charges allowed by the court.....	
6. Specific exemption (\$50,000 if decedent was a resident of the United States, Hawaii, or Alaska; no exemption if a nonresident).....	50,000
Total deductions.....	\$

  

Total gross estate wherever situated.....  
 \*Total gross estate to be filed in only if decedent at time of death was a nonresident of the United States, Hawaii, or Alaska

\* *Note.*—If decedent was a nonresident, the share of total deductions to be taken here is a proportion equal to the proportion the gross estate within the United States, Hawaii, and Alaska is of the whole gross estate, wherever situated.

I, Stanley Field, the undersigned executor, do hereby solemnly swear that the above statement of gross and net estate of Kate Field, the above-named decedent, is in all respects true to the best of my knowledge and belief; that letters testamentary were granted upon the said estate on the 20th day of June, 1917, by the probate court at Cook County, Illinois; that no distribution from the estate to beneficiaries has to this date been made, and that this is a tentative return of the estate.

STANLEY FIELD.

Subscribed and sworn to before me at Chicago, Ill., this 7th day of July, 1917.

WILLIAM R. DICKINSON,  
*Notary Public, Deputy Collector.*

*Exhibit "D"*

Form 1. Receipt for advance payments—regular taxes. United States Internal Revenue.

Collector's Office First District of Illinois

At Chicago Date 7/11-1917

Kate Field Estate of

by Stanley Field Executor

1550 N. State Parkway

Chicago, Illinois

Form 58-----; -----

Form 23 (Year) 1917 ; (Month) July

(Year) (Month)  
Estate Tax

-----  
(Description of collection, same  
as in column 3, Form 58, for  
Act 9/8-16 and 3/3-1917

-----  
(Unassessable items.)  
\$13,968.65

Received payment July 11 1917  
JULIUS F. SMETANKA,  
Collector of Internal Revenue.

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*Exhibit "D-a."*

Letters testamentary—Probate Court of Cook County.

STATE OF ILLINOIS,

County of Cook, ss:

*The People of the State of Illinois, to all to whom these presents shall come, greeting:*

Know ye, that whereas Kate Field, late of the County of Cook and State of Illinois, died on or about the 29th day of April, A. D. 1917, as it is said, after having duly made and published her last will and testament, leaving at the time of her death property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; and inasmuch as it appears that Stanley Field has been appointed executor in and by the said last will and testament, to execute the same, and to the end that said property may be preserved for those who shall appear to have a legal right or interest therein, and that the said will may be executed according to the request of the said testatrix we do hereby authorize him, the said Stanley Field as such executor to collect and secure all and singular the goods and chattels, rights, and credits which were of

the said Kate Field at the time of her decease, in whosoever hands or possession the same may be found, in this State, and well and truly to perform and fulfill all such duties as may be enjoined upon him by the said will, so far as there shall be property, and the law charge him and in general to do and perform all other acts which now or hereafter may be required of him by law.

Witness John A. Cervenka, clerk of the Probate Court of said County of Cook, and the seal of said court, this 20th day of June, A. D. 1917.

JOHN A. CERVENKA, *Clerk.*

66 STATE OF ILLINOIS,  
*County of Cook, ss:*

I, John F. Devine, clerk of the Probate Court of Cook County, in the State aforesaid, do hereby certify that the within is a true and correct copy of letters testamentary issued on the 20th day of June, A. D. 1917, to Stanley Field, now in force, as it appears from the originals on file, and from the records of the Probate Court in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Probate Court, at Chicago, in said county, this 3d day of May, A. D. 1920.

JOHN F. DEVINE, *Clerk.*

*Exhibit "E."*

FEBRUARY 19, 1920.

H. W. MAGER, Esq.,  
*Acting Collector, U. S. Internal Revenue,  
Treasury Department, Chicago, Ills.*

DEAR SIR: I hand you herewith certified check for the sum of \$122,102.11 as payment for additional estate tax, with interest, determined by the Government in the case of Kate Field, deceased.

In paying this amount I do so under protest and compulsion, contending as I do that this tax is not justifiable under the laws of the United States or the regulations of the Treasury Department; that it is a tax assessed on the property in the estate of Joseph N. Field, over which Kate Field exercised a power of appointment, and that such tax is not justifiable under the law that was in force on April 29th, 1917, the date of the death of the said Kate Field. I further protest and contend that such tax has not properly been computed for the reason set forth in my claim for refund heretofore filed.

Yours, very truly,

(Signed)

STANLEY FIELD,  
*Executor.*

67

*Exhibit "F."*

(Treasury Department, U. S. Internal Revenue, Form 46.)

Claim for refund.—Taxes erroneously or illegally collected. Also amounts paid for stamps used in error or excess.

STATE OF ILLINOIS,  
County of Cook, ss:

(IMPORTANT.—This claim should be forwarded to the Collector of Internal Revenue to whom the tax was paid and must be accompanied by collector's receipt therefor.)

STANLEY FIELD,  
As Executor of Estate of Kate Field, Deceased,  
112 West Adams St., Chicago, Illinois.

This deponent being duly sworn according to law deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to the claim are true and complete:

1. Business engaged in by claimant: Executor estate Kate Field, deceased.
2. Character of assessment or tax: Additional estate tax.
3. Amount of assessment or stamps----- \$122,102. 11
4. Amount now asked to be refunded (or such greater amount as is legally refundable)----- 121,059. 60
5. Date of payment of assessment or purchase of stamps, February 19, 1920.

Deponent verily believes that the amount stated in Item 4 should be refunded, and claimant now asks and demands refund of said amount for the following reasons:

68 The above amount of \$121,059.60 now claimed on refund is that part of the total additional tax of \$122,102.11 paid on February 19th, 1920, which has been assessed by the Government on the estate of Kate Field, deceased, on the theory that that part of the trust estate of Joseph N. Field, deceased, over which Kate Field, deceased, exercised a power of appointment, was a part of the gross estate of Kate Field, deceased, within the meaning of the estate tax law.

The total value of the individual estate of Kate Field, deceased, as finally determined on review by the Commissioner of Internal Revenue, was \$450,675.69, from which deductions of \$78,458.68 were allowed, leaving a net individual estate subject to tax of \$372,217.01. The tax computed upon this sum is \$15,583.02, or \$1,032.35 in excess of the amount acknowledged by the Commissioner of Internal Revenue to have been paid on the first return. Interest at 10% for thirty-six days (the period of the penalty) on this sum of

\$1,032.35 amounts to \$10.16, making a total of \$1,042.51 as an additional tax on the individual estate of Kate Field, deceased, determined by the Commissioner of Internal Revenue to be due because of increased assessed values on said individual estate. Therefore, said amount of \$1,042.51 is not claimed on this refund, but the difference between said sum and the total additional tax of \$122,102.11, or \$121,059.60, represents the tax fixed by the Commissioner of Internal Revenue, as aforesaid, on the estate of Kate Field, deceased, on the theory that that part of the trust estate of Joseph N. Field, deceased, over which said Kate Field, deceased, exercised a power of appointment was a part of the gross estate of said Kate Field, deceased, within the meaning of the United States internal revenue law of 1916, as amended March 3rd, 1917, title 2; and said amount of \$121,059.60 is therefore claimed on refund.

69 It is contended by this claimant that no part of the Joseph N. Field, deceased, estate, over which said Kate Field had and exercised her power of appointment is or ought to be construed as a portion of the gross estate of said deceased appointor Kate Field, within the terms of said internal revenue law of 1916, title 2, as amended; and that therefore no tax is due or collectible upon the estate as passing or to pass pursuant to the exercise of said power of appointment, and that said law did not authorize the assessment or collection of said tax, and said tax was paid under written protest.

And this deponent further alleges that the said claimant is not indebted to the United States in any amount whatever, and that no claim has heretofore been presented, except as stated herein, for the refunding of the whole or any part of the amount stated in Item 3.

[NOTARIAL SEAL.]

Sworn to and subscribed before me this 3rd day of March, 1920.

(Signed) STANLEY FIELD,

*Executor of Estate of Kate Field, deceased.*

/s/ FRED M. OUTHOUSE, *Notary Public.*

(Name.)

(Title.)

(This affidavit may be sworn to before an deputy collector of internal revenue without charge.)

Filed March 4, 1920, 10 a. m., in internal revenue office, Chic.

70 Receipt attached to claim for refund as follows:

(Copy)

(Treasury Department, U. S. Internal Revenue. Form 803.)

ESTATE TAX RECEIPT.

Executor's copy (in duplicate.)

Collector First District of Illinois. At Chicago, Ill. Date Feb. 19, 1920.

NOTE.—Payment of the tax indicated by the return on Form 706 is not conclusive as to ultimate tax liability. An investigation will be conducted to verify the accuracy of the return. If tax in excess of the amount indicated by the return is disclosed and one year and 180 days have elapsed since the date of decedent's death, interest will attach at the rate of 10 per centum per annum on and after the expiration of 30 days from receipt of notice of such excess tax. Section 407, Revenue Act of 1918.

Estate of Kate Field, deceased.

STANLEY FIELD,

219 W. Adams Street, Chicago, Ill.

Received payment, Feb. 20, 1920.

H. H. MAGER,

By

Acting Collector of Internal  
Revenue First District Illinois.

List 23A Feb. -----

Month.

Date of death, April 29, 1917 -----

Tax according to return, \$1 -----

Interest 6% -- days ----- \$ -----

----- % penalty -----

\$ ----- Balance of

tax according to Commissioner's noti-

fication ----- \$120,900.58

Int. 10% 10 days ----- 1,192.53

Total ----- 122,102.11

Received payment,

Paid under protest,  
Collector of Internal Revenue.

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VII. JUDGMENT OF THE COURT.

At a Court of Claims held in the city of Washington, on the 28th day of June, A. D. 1920, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises find in favor of the plaintiff, and do order, adjudge, and decree that the plaintiff herein, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of one hundred and twenty-one thousand, fifty-nine dollars and sixty cents (121,059.60).

BY THE COURT.



## VIII. DEFENDANT'S APPLICATION FOR AND ALLOWANCE OF AN APPEAL.

From the judgment rendered in the above-entitled cause on the 28th day of June, 1920, in favor of claimant, the defendants, by their Attorney General, on the 30th day of June, 1920, make application for, and give notice of, an appeal to the Supreme Court of the United States.

FRANK DAVIS, JR.,  
*Assistant Attorney General.*

Filed June 30, 1920.

Allowed.

EDWARD K. CAMPBELL,  
*Chief Justice.*

June 30, 1920.

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Court of Claims.

STANLEY FIELD, AS EXECUTOR OF THE ESTATE OF KATE	} No. 34595.
Field, deceased,	
vs. THE UNITED STATES.	

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the opinion of the court on demurrer; of the submission of the case on agreed statement of facts; of the findings of fact and conclusion of law filed by the court, with the exhibits therein referred to; of the judgment of the court; of the application of the defendants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at Washington city, this second day of July, A. D. 1920.

F. C. KLEINSCHMIDT,  
*Assistant Clerk Court of Claims.*

[SEAL.]

(Indorsement on cover :) File No. 27799. Court of Claims. Term No. 442. The United States, appellant, vs. Stanley Field, as executor of the estate of Kate Field, deceased. Filed July 10th, 1920. File No. 27799.